# APPENDIX.

## CONSTITUTIONAL PROVISIONS.

**The First Amendment to the United States Constitution:** "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

**The Sixth Amendment to the United States Constitution:** "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

**Section One of the Fourteenth Amendment to the United State Constitution:** "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

**ORDER OF THE TENNESSEE SUPREME COURT DENYING THE PETITION FOR WRITS OF CERTIORARI AND SUPERSEDEAS TO THE TENNESSEE COURT OF CRIMINAL APPEALS.**

(Entered January 20, 1969.)

Petition for Certiorari Denied. No Written Opinion.

[This order appears in volume one of the Record at page 84.]

**ORDER OF THE TENNESSEE COURT OF CRIMINAL APPEALS.**

(Entered November 18, 1968.)

The petitioners, Charles Edmundson and Roy Hamilton, have presented to this member of the Court a petition for the writs of certiorari and supersedeas, seeking to review and reverse the order of the trial judge in holding them in contempt of court for violating an order in regard to pretrial publicity.

After a full hearing on September 27 and 30, 1968, the trial judge found these petitioners, as well as an attorney and an investigator, in contempt of court. He was undecided at that time as to what action he should take about punishment and reserved it for further consideration. In his remarks at the hearing, he indicated that the punishment might be mitigated or even not be imposed. The petitioners contend that, in finding them in contempt, the trial judge made an erroneous decision, in violation of their rights of free speech and press, and that he exceeded his jurisdiction.

The writs of certiorari and supersedeas are denied by me for the following reasons:

The trial judge had jurisdiction in this case. His order is interlocutory; the writ of certiorari is not employed to inquire into the correctness of an interlocutory order which is in the court's jurisdiction but is merely an erroneous exercise of that jurisdiction. *McGee v. State*, 207 Tenn. 431, 340 S.W.2d 904.

The judgment in this case is not such an order as should be reviewed by certiorari. An adjudication of contempt is not final until punishment is imposed. Here no punishment has been imposed. Conceivably, punishment may never be imposed. There are no exceptional circumstances which call for the issuance of the writ in the interest of justice.

The petition and the record of the proceeding in the Criminal Court of Shelby County are returned to the attorneys for petitioners.

[This order appears in volume one of the Record at page 82.]

**ORDER OF THE TENNESSEE SUPREME COURT DENYING THE PETITION FOR WRITS OF CERTIORARI AND SUPERSEDEAS TO THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE.**

(Entered November 8, 1968.)

The petition of Charles Edmundson and Roy Hamilton for writs of certiorari and supersedeas having been inadvertently filed herein are hereby stricken from the docket of this Court and the file is ordered returned to counsel for the petitioners.

Petitions of this kind should be made to the Court of Criminal Appeals since said court has jurisdiction of all criminal cases on appeal. See T.C.A. 16-448. Cases involving contempt proceedings are criminal in nature and

any appeal is to the appellate court having criminal jurisdiction. This Court only has jurisdiction when a case is certioraried from the Court of Criminal Appeals or where the sole and single question for determination involves the constitutionality of a statute or ordinance. See *Metcalf v. Eastman,* 190 Tenn. 206, 228 S.W.2d 490, and T.C.A. 16-448.

The costs are taxed to the petitioners.

Per Curiam.

[This order appears in volume one of the Record at page 78.]

## OPINION OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE.

(Decided September 30, 1968.)

I have made a few notes here, but, of course, it didn't include what has been said this morning.

Very briefly, as to Mr. Clay's remarks about the Maryland case, I think that the Baltimore Radio case is distinguishable from the case at bar in that the order there was much too broad. As Mr. Clay observed, the order there was much like the catch-all at the end of the amici curiae order, which says that "and all other statements which may be prejudicial to a fair trial by an impartial jury in this case, whether specified herein or not".

That was just the catch-all phrase at the bottom or at the end of the five specifics that were set out, which I will come to in my notes, but the one complained of, of course, is the "treatment, acts and attitude of the defendant", which I think is very specific, and I will discuss it in my notes here.

Now, Mr. Hanes, Jr. makes a point of the difficulty of him and his father in dealing with the news media. I would agree with him. This whole climate is rather difficult, but I would recommend to him what the Court does. The Court has been approached by a few people with questions about the Ray case, and all I have to tell them is; "I consider myself bound by my own Order". That is all it is.

We have got to try this case in the Courtroom and not by extrajudicial statements, and as I will come to in my notes, there is a great distinction between what happens in Court, where you have got an adversary proceeding and your opponent, if any charges or claims are made, can contest them, then they can be borne out in Court by witnesses on the stand and either the Judge or Jury decide the point.

The whole situation in the Courtroom is under the control of the Judge, and it is a lot different from saying the same thing in a courtroom and going out extrajudicially and saying to a reporter or TV man or to a radio man, "Those things that I said in Court are true". They are not able to be controverted. They are given wide dissemination, and there is just a great distinction.

Now Mr. Livingston makes much about the absence of a man that is not under subpoena and who Mr. Hays says was present at an interview that he had with Mr. Edmundson, which was before the article was printed. Mr. Edmundson says it was afterwards and had absolutely nothing to do with it. It is unfortunate that things turned out the way they did, but I don't believe we can do anything about it if the man is not under a subpoena.

Now let's get down to the issues. Trial Courts, such as this one, have not sought the responsibility of dealing with pretrial publicity in criminal trials of national significance. That responsibility has been placed on us

by the Supreme Court of the United States, and it is held in Sheppard vs. Maxwell that if the Trial Court fails to perform its duties in this regard, the case will be reversed.

I personally would hate to live anywhere where there is no freedom of the press. Freedom of speech and freedom of the press are set out in the First Amendment. Those rights are set out in the First Amendment of the Constitution of the United States. A fair trial is guaranteed to the defendant in the Sixth Amendment of the United States Constitution. Both of these great rights are basic and are foundation stones to our democracy, there is no doubt about that, and we are here concerned with an area where these great rights are in conflict. Really, it is a frontier of the law. There are but few guidelines available. But neither the novelty nor difficulty of the decision in this matter can excuse our avoidance of a decision. An avoidance of a decision is a luxury that this Court can't afford.

Both the United States Constitution and the Tennessee Constitution guarantee to the accused a speedy public trial by an impartial jury. Nothing is said about a fair trial for the State, but that is necessarily the other side of the coin, for a trial by a Jury biased for the defendant would not be a fair trial, and the Jury would not be impartial.

An impartial Jury has been held in this State to be one that takes the box and is indifferent as between the parties.

The first Order of this Court on publicity and the Amendment thereto was directed, among others, to "lawyers participating in this case", as paragraph 7, and their "investigators", paragraph 7. They were ordered not "to take part in interviews for publicity and from making extrajudicial statements about this case as are prejudicial to a fair trial by an impartial jury".

That was the first Order and Amendment. The first Order was on July 18, 1968; the Amendment was July 23, 1968.

The second Order entered July 30, 1968 provided that "All lawyers participating in this case and their investigators * * * are forbidden to take part in interviews or press conferences for publicity and are enjoined from making extrajudicial statements about this case which involves * * * (5) the treatment, acts and attitude of the defendant".

Webster's Third New International Dictionary defines the word "extrajudicial" as "1*a*, lying outside or beyond the Court proceedings, forming no valid part of the case before a Court", and "1*b*, not made before a Judge or the Court in due course of legal proceedings".

It is obvious that neither the press nor the individual reporters are specifically named in any of the above Orders.

The Court finds that each of the four defendants has had due notice of these orders. Each of the orders was given wide dissemination by all news media throughout the area. Hanes, Senior, a lawyer for the defendant, was a party specifically referred to in both the Orders, as was his investigator. The legal effect of the Order was brought up in open Court on September 6, 1968 by Mr. Hanes, and Mr. Hays was in the Courtroom. Both newspaper reporters received copies of the Order of July 30, 1968, as did their respective newspapers. Both papers gave prominent publicity to the Order of July 18, 1968, and the Amendment of July 23, 1968.

The offending article on September 12, 1968, Thursday, an article under the byline of defendant, Charles Edmundson, reporter for the Commercial Appeal, appeared in the Commercial Appeal quoting the defendant,

Renfro T. Hays, a private detective employed by Mr. Hanes, Senior, as saying: Last night, September 11, 1968, that the health of James Earl Ray is so threatened by security measures in force at the Shelby County Jail that he may not be able to stand trial as scheduled November 12th, an indirect statement. Hays compares some of the conditions in Ray's cell with "devices used by Communist police agents to destroy the health and balance of their victims". Hays spoke of bright lights kept shining night and day, of television cameras constantly monitoring the prisoner and of uninterrupted lack of privacy. This is an indirect statement. Hays said, "I don't think Sheriff Bill Morris is trying to drive this guy out of his mind, but it is the effect of this type of surveillance that counts."

On Friday Mr. Hays took the witness stand and under oath denied making each and every statement relating to Ray's treatment in jail.

After the case had been argued, the Court allowed Mr. Edmundson to take the stand, and under oath he testified that Mr. Hays made each and every statement in the article attributed to him in both direct and indirect quotes. This morning, in rebuttal, Mr. Hays has denied again making the significant quotes as set out in the Edmundson article.

The testimony is in direct conflict.

It is the duty of the Court to determine the credibility of the witnesses and determine the truth of the matter.

The Court believes Mr. Edmundson has told the truth. It is clear that the above statements are the result of "an interview for publicity", and are the account of "extra-judicial statements", "prejudicial to a fair trial by impartial jury in the case", by an "investigator of a lawyer participating in the case".

On Thursday, September 12, 1968, the evening paper, the Memphis Press-Scimitar, published an article under the byline of Roy Hamilton, Press-Scimitar staff writer, stating among other things that "Hanes, Senior had intimated in a Birmingham interview that Ray might not be able to stand trial in November because his health was being jeopardized by intensive security measures in the Shelby County jail cell." This was a direct quotation in the third paragraph.

In the seventh paragraph, "In the earlier report, Hanes, Senior, was quoted as saying that Ray had undergone enough to bug anybody" during his confinement. He said, "Ray has had two guards breathing down his neck 24 hours a day and sometimes has to cover his eyes against bright lights shining on him night and day in order to sleep".

And in the eighth paragraph, Hanes charges that the security set-up surrounding Ray constitutes "cruel and inhuman treatment".

Hamilton did not testify, but Mr. Hanes, Senior did. It may be remarked that anything said in open Court by a lawyer in a pending case, if relevant and in proper language, is absolutely privileged, and the press has an absolute right to report it. Mr. Hanes, Senior took the stand and on cross-examination admitted that he might have stated in Birmingham to some Birmingham reporters, among others, that some of the statements about Ray's treatment in his cell attributed to Hanes in Hamilton's story of September 12th were true, but all such statements had already been made orally by him, Hanes, in open Court.

There is surely an obvious difference between making charges and claims in Court, where there is an adversary proceeding and where the opposing side can challenge the

truth of the charges and claims, and sworn proof can be put on to controvert the same under the direction of a Judge, and the giving of unsworn statements outside Court and extrajudicial statements that the identical charges and claims are true, in fact, and for the same to be disseminated throughout the community to possible jurors who will ultimately try this case.

If the statements as to the treatment, acts and attitude of the defendant are prejudicial to a fair trial by an impartial jury in the case and are made extrajudicially, that is, outside the Court, then they are in violation of the Orders of the Court, whether made before or after the same identical statements are legally, because privileged, made in open Court or in a pleading filed in Court.

As to the two reporters and the defense of the First Amendment, neither the press, communications media nor these two reporters are enjoined, either specifically or by class in the Orders of the Court.

Prior restriction of free speech and freedom of the press has been held to be unconstitutional by the Supreme Court. It cannot be doubted, however, that the Court has jurisdiction over lawyers participating in the case and their investigators. It is spelled out in the Sheppard vs. Maxwell case that the Court not only has the power to regulate the extrajudicial statements, but that it would be reversible error for the Court not to do so if prejudicial publicity results from such failure.

These two newspaper reporter defendants avoid responsibility of these contempt charges by claiming First Amendment immunity. It is very generally held that all persons who aid and abet those against whom an injunction has been rendered in disobeying it, are guilty of contempt of Court if they have actual knowledge of the injunction, although not themselves parties to the suit or

named in the Order granting the injunction. 43 Corpus Juris Secundum, 263(c), page 1012. And see Boils vs. Boils, 41 Tennessee 284. This is an old case, 1860, but it is still the law in Tennessee.

In this case the Tennessee Supreme Court specifically held that an individual not a party to the suit and not named in the injunction, either specifically or as a member of a group, nonetheless is bound by an injunction even though his acts of violation of an injunction occurred before the injunction was actually issued, if said stranger had knowledge of the fiat for the injunction.

Mr. Clay, Mr. Burch and Mr. Hanes, Junior all mentioned the report of the "Committee on the Operation of the Jury System on Free Press, Fair Trial Issue", addressed to the Chief Justices of the United States and Members of the Judicial Conference of the United States. This Committee was led by Chairman Irving I. Kaufman, and the report is dated September, 1968.

The Court has read this report with great interest, and on Page 16 of the said report it is stated: "The Supreme Court of the United States has indicated in Sheppard vs. Maxwell, that the Courts have both the power and responsibility to insure that a fair trial by an impartial jury is afforded every criminal defendant. However, the power of the Courts to control the news media and other sources of possible prejudice to the defendant is, under the Constitution, not without limits", citing Woods vs. Georgia, 370 U. S. 375, 1962.

The Court read Woods vs. Georgia, the facts of which are not here apposite. In that case, however, the criteria of the great landmark cases on free speech, free press curtailment are reviewed. Bridges vs. California, 314 U.S. 252; Pennecamp vs. Florida, 328 U.S. 331 and Craig vs. Harney, 331 U.S. 367, laid down the guidelines that the exercise of

judicial power over out of Court publications was to be governed by the clear and present danger standard; that "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterance can be punished". Bridges, P. 263; and "The fires which (the expression) kindles must constitute an imminent, not merely a likely, threat, to the administration of justice. The danger must not be remote or even probable. It must immediately imperil." Harney, P. 376.

This Court is of the considered opinion that the extrajudicial statements herein complained of are extremely prejudicial and constitute a clear and present danger to the selection of an impartial jury and the holding of a fair trial for both defendant and the State; that such prejudicial, extrajudicial statements are extremely serious, and the degree of imminence of peril is extremely high; and that the prejudice that such statements kindle constitutes an imminent, not merely likely threat to the administration of justice.

The danger of prejudicing prospective jurors is not remote or even probable, but is immediately imperiling. The Court is persuaded that all the criteria above set out are met by the particular facts and circumstances of this case.

The Court takes notes of these significant words of the Supreme Court of the United States in Sheppard vs. Maxwell, 384 U.S. 333 at Page 362, and I quote:

"Had the Judges and the other officers of the Court and the police placed the interest of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom, not pieced together from extrajudicial statements".

This Court must place the interests of justice first.

Justice demands a fair trial by an impartial jury for both the defendant, James Earl Ray, and the State of Tennessee.

It is my present opinion that the respondents, each and all, have failed to show good cause why they should not be held in contempt for the violating the Orders of this Court, of which they had notice.

I am not yet ready to decide what final disposition should be made of the matter. It might well be that future action and conduct of all or some of these respondents might be considered as a mitigation or even as a purgation of the offense.

Consequently, I reserve final disposition of this matter for a future day.

Is there anything else at this time in this matter?

[This opinion appears in volume three of the Record at page 326 and is paraphrased in volume three of the Record at page 282.]

**OPINION OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE ON PETITIONERS' MOTION FOR REHEARING OR, ALTERNATIVELY, THAT SENTENCE BE IMPOSED.**

(Decided September 30, 1968.)

When I stated that I am not yet ready to decide what final disposition should be made of this matter, and I am still of that opinion, sir.

I can deeply sympathize with your desire to get this in some Appellate Court now. I am just not ready to decide it, and it is a knotty question that I didn't seek, but I am very sensitive to what I think my duties are, and I have stated here what I think the law is, and I have stated here that, like it or not, it is my duty to follow justice in this matter and that is what I have done. And

while I would like to place the press in a situation they are seeking, to place a fine or some punishment on these defendants, why I am just not ready to do that yet.

So the petition for motion for rehearing or to sentence the defendants will be overruled at this time.

[This opinion appears in volume three of the Record at page 310.]

**ORDER OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE ON "SCIRE FACIAS."**

(Entered October 11, 1968.)

This cause came on to be heard on a verified petition for citation for contempt of Arthur J. Hanes, Sr., Renfro T. Hays, Roy Hamilton and Charles Edmundson, heretofore filed by the Court-appointed amici curiae; personal service of said petition upon all four named respondents; scire facias issued by this Court ordering said respondents to show cause why they should not be held in contempt of previous orders of this Court; the sworn answer of the respondent Renfro T. Hays; the hearing in open Court on the 27th day of September, 1968, and on the 30th day of September, 1968, at which time sworn testimony was adduced by the petitioners and the respondents; the argument of counsel for all parties; the exhibits in the cause, and upon the entire record in this cause, from all of which it appears to the Court:

That the respondents, Arthur J. Hanes, Sr., Renfro T. Hays, Roy Hamilton and Charles Edmundson, each, are guilty of contempt as found by this Court in its opinion which has been filed in this cause, and which the Court incorporates by reference in this order the same as if copied herein verbatim; and

The Court being undecided at this time as to what action the Court should take by way of punishment on account of said contempts, and being desirous of giving the matter further consideration,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter be, and the same is hereby, reserved by this Court for further and future orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motions of the respondents Roy Hamilton and Charles Edmundson, made by and through their attorneys, the Honorable Armistead Clay and the Honorable Ezra Z. Bryan, at the conclusion of the Court's opinion, to reconsider the Court's action and, in the alternative, to fix punishment, are hereby denied.

To all of which the respondents respectfully except.

[This order appears in volume three of the Record at page 339.]

**ORDER OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE ON MOTION FOR NEW TRIAL.**

(Entered October 22, 1968.)

This cause came on this day to be heard upon motion for new trial having been filed in the cause in behalf of Charles Edmundson and Roy Hamilton, said motion being filed on the 14th day of October, 1968; upon the amendment to the motion for new trial, said amendment being in behalf of Charles Edmundson and Roy Hamilton and filed on the 18th day of October, 1968; upon the argument of counsel representing the respondents named hereinabove; upon the statement of the Court's amici curiae and

upon the entire record in this cause, from all of which it appears to the Court:

That the motion for new trial and the amendment to the motion for new trial is inappropriate and premature at this time; that the Court, therefore, believes that the motion for new trial filed in this cause and the amendment to the motion for new trial should be stricken from the records and minutes of this Court, in toto.

IT IS, THEREFORE, ORDERED AND ADJUDGED:

That the motion for new trial filed in this cause on the 14th day of October, 1968, and the amendment to the motion for new trial filed in this cause on the 18th day of October, 1968, be and the same are hereby stricken from the records and minutes of this Court, in toto.

The respondents, Charles Edmundson and Roy Hamilton, each do hereby take exception to the Court's ruling, said exception being duly noted by the Court.

[This order appears in volume three of the Record at page 346.]

**ORDERS OF THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE REGARDING COURTROOM PUBLICITY.**

**Order of July 18, 1968:**

ORDER ON COURTHOUSE AND COURTROOM PROCEDURES AND PUBLICITY

The Constitutions of the United States and the State of Tennessee guarantee defendants in criminal cases due process of law and the right to a fair trial by an impartial jury. It is the duty of the trial Court to see that every defendant receives all his constitutional rights.

From the world wide attention attracted to this case at bar resulting in massive and pervasive publicity in the

news media, the Court is of the opinion that the following rules are necessary to a constitutionally guaranteed orderly and fair trial by an impartial jury, and therefore orders:

The term "Criminal Courts Buildings" as used herein shall mean the Criminal Courts Building, 150 Washington, and the adjoining Shelby County Building, 157 Poplar Avenue, Memphis, Tennessee.

All entrance ways, corridors, and approaches to Court rooms, offices and other rooms in the Criminal Courts Buildings will be kept clear at all times for free access thereto by those using them in the course of their employment or those having business to transact therein.

No cameras, photographic, television, radio or sound equipment, including tape records, will be permitted in the Criminal Courts Buildings or upon the alley-ways, parking lots, yards or grounds immediately surrounding said buildings. No photographs will be taken of the Jury, nor will they be televised. No sketches will be made in the Criminal Courts Buildings.

All persons seeking admission to the Courtroom will submit voluntarily to a search of his person before being admitted.

No one will enter the Courtroom after a session has begun without permission of the Court, but must wait until the next recess. No one will leave the Courtroom except at recess or adjournment except in an emergency. At noon recess and adjournment, and at any other time the Jury is retiring from the second floor, or the prisoner is being removed to the jail, the spectators shall remain seated in the Courtroom until the Jury and prisoner have had ample time to withdraw, and said spectators have been given permission to disperse.

The bar of the Court within the rail is reserved for the defendant, counsel, members of the Bar, Court personnel and such witnesses as counsel may desire to be within the bar for consultation purposes. No one else will enter without permission of the Court.

No one except attorneys of record, their agents, Court personnel, witnesses and Jurors may handle exhibits except by order of the Court.

All lawyers participating in this case, their assistants, office associates, staff members, investigators and employees under their supervision and control are forbidden to take part in interviews for publicity and from making extra-judicial statements about this case from this date until such time as a verdict is returned in this case in open Court.

The County Medical Examiner, Jury Commissioners, Criminal Court Clerk, County Sheriff, Police Officials and other law enforcement officers, employees of this Court, all other persons employed in the "Criminal Courts Buildings", their associates, deputies, assistants, staff members and personnel under their supervision and control are forbidden to participate in interviews for publicity and from making extra-judicial statements about this case from this date and until such time as a verdict in this case is returned in open Court.

All witnesses, persons subpoenaed to Grand Jury or Court, jurors, and those persons summoned but excused from serving as jurors, are forbidden to participate in interviews for publicity and from making extra-judicial statements about this case from this date and until such time as a verdict in this case is returned in open Court.

Nothing in this order shall prohibit any witness from discussing any matter in connection with the case with

any of the attorneys representing the defendant or the State, or any representative of such attorneys.

[This order appears in volume three of the Record at page 313 and is paraphrased in volume two of the Record at page 5.]

**Order of July 23, 1968:**

The order heretofore entered in this cause on the eighteenth day of July, 1968, and headed "Order On Courthouse and Courtroom Procedures and Publicity" is hereby amended as follows:—

In paragraphs VII, VIII and IX of said Order, the terms "Interviews for publicity" and "extra-judicial statements" shall be limited to such interviews and statements as are prejudicial to a fair trial by an impartial jury in the case.

This is done by the Court on its own motion, this twenty-third day of July, 1968.

[This order appears in volume three of the Record at page 316 and is paraphrased in volume two of the Record at page 10.]

**Order of July 29, 1968:**

This cause came on this day to be heard by the Court on its own motion from all of which it appears to the Court:

That its Order on Courthouse and Courtroom Procedures and Publicity entered by the Court on July 18, 1968, as well as the Amendment to the Order, same being dated the 23rd day of July, 1968, may have been violated by one or more person or persons.

It, therefore, further appears to the Court and it is the Court's desire and opinion that it should appoint certain

attorneys as "amici curiae" for the purpose of assisting and advising with the Court with regard to the possible violation or violations of either of the orders identified herein above.

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that Don G. Owens, Lucius E. Burch, Jr., J. Alan Hanover, Cooper Turner, Jr., Leo J. Buchignani, James D. Causey, Leo Bearman, Jr., and Lee A. Hardison, attorneys and members of the Memphis, and Shelby county Bar Association, be and they are hereby appointed "amici curiae" by this Court.

IT IS FURTHER ORDERED AND ADJUDGED that the attorneys aforesaid be and they are hereby directed to investigate assist and advise with the Court with regard to any possible violation or violations of either of the orders mentioned herein above, and otherwise assist the Court as may be expedient or necessary.

ENTERED this the 29th day of July, 1968.

[This order appears in volume three of the Record at page 317.]

**Order of July 30, 1968:**

In this cause, the Court having heretofore appointed a committee of eight members of the Bar to act as amicus curiae and said committee having this day filed a report that there is probable cause to believe that this Court's Order of July 18, 1968, as amended July 23, 1968, has been violated by certain individuals in certain circumstances, to-wit:

(1) Certain statements attributed to Arthur J. Hanes, Esq., to the effect that the shooting of Doctor Martin Luther King, Jr. involves a Communist conspiracy, to the effect that his client's rights were being trampled in jail,

and to the effect that himself, his family and servants are being threatened by "them", as quoted in the Memphis Press Scimitar of Saturday, July 27, 1968, and the Commercial Appeal of Sunday, July 28, 1968;

(2) Certain statements in Memphis Press Scimitar of July 27, 1968, attributed to William Morris, Sheriff of Shelby County, Tennessee, concerning the cost and expenses for the security of the prisoner and the treatment of the prisoner, and the prisoner's demeanor and attitude while in confinement;

(3) Certain statements appearing in the Memphis Press Scimitar of Saturday, July 27, 1968, attributed to Russell X. Thompson, Esq. concerning his opinion as to the guilt or innocence of the defendant; and said report further pointing out that to the extent that Ramsey Clark, Attorney General of the United States, is a "Law Enforcement Officer" or "a lawyer participating in this case" through his staff, assistants, office associates, investigators or employees under his supervision, the statements attributed to him and the United States Department of Justice as referred to in the Commercial of July 28, 1968 are in probable violation of the principles set out in Sheppard vs. Maxwell, 384 U.S. 333, 16 L.Ed.2d 600, 86 S. Ct. 1507 (1966), said statements being to the effect that there was no evidence of a conspiracy in the shooting of Doctor Martin Luther King, Jr.

The Court, in the interest of preserving the constitutional rights of all concerned and protecting the orderly preparation and progress of the trial, reserves further inquiry and disposition of each and all of the above instances until a later date.

And whereas it is the desire of the Court to avoid any possible misunderstanding of its orders heretofore

made, said orders of July 18 and July 23 respectively are herewith supplemented as follows:

All lawyers participating in this case, their assistants, associates, staff members, investigators and employees under their supervision and control, County Medical Examiner, Jury Commissioners, Criminal Court Clerk, County Sheriff, Police Officials and other law enforcement officers, employees of this Court and all other persons employed in the "Criminal Courts Buildings", their associates, deputies, assistants, staff members and personnel under their supervision and control, are forbidden to take part in interviews or press conferences for publicity and are enjoined from making extra-judicial statements about this case which involve: (1) the personal belief of the Declarant as to the guilt or innocence of the accused; (2) the plans of the Declarant relating to the preparation or conduct of the trial, the theory, techniques and strategy of the Declarant in the preparation and trial of the case; (3) the jurors or potential jurors who may serve; (4) the comments of the Declarant about the merits of the case and about any evidence which may be presented; (5) the credibility of or information concerning any known or intended witnesses or the treatment, acts and attitude of the defendant, and are further enjoined from making any and all other statements which may be prejudicial to a fair trial by an impartial jury in this case, whether specified herein or not.

All persons or entities subject to this Order who feel aggrieved by anything herein contained are hereby admonished that any such grievances or complaints should be judicially presented.

The Court recognizes the wide and pervasive publicity which has been and will be an inevitable incident of this trial. The Court further recognizes that there are

many individuals who are beyond the jurisdiction of this Court, but who may be interested in the outcome of this trial, and whose statements may have been violative of this Order had the Court jurisdiction over such parties. As to such persons, the Court urges self-imposed compliance with this Order in the interests of a fair trial to the defendant and to the State of Tennessee.

In accordance therewith the Court orders a certified copy of this Order to be sent by the Clerk of this Court to all persons named herein or subject hereto, and all newspapers of general circulation, radio and television stations within the jurisdiction of this Court.

[This order is paraphrased in volume two of the Record at page 11.]

**NEWSPAPER ARTICLE BY CHARLES EDMUNDSON WHICH APPEARED IN "THE COMMERCIAL APPEAL" ON SEPTEMBER 12, 1968.**

RAY SECURITY CALLED DANGER TO HIS 'SANITY'

By Charles Edmundson

The health of James Earl Ray, charged with slaying Dr. Martin Luther King Jr., is so threatened by security measures in force at the Shelby County Jail that he may not be able to stand trial as scheduled Nov. 12, a private detective employed by Ray's attorney said last night.

Renfro T. Hays, 40-year-old investigator with offices in the Commerce Title Building, compared some of the conditions in Ray's cell with "devices used by Communist police agents to destroy the health and balance of their victims."

Hays spoke of bright lights kept shining night and day, of television cameras constantly monitoring the prisoner and of and [*sic*] uninterrupted lack of privacy.

Arthur Hanes, Ray's attorney, complained of the same items to Criminal Court Judge W. Preston Battle in a preliminary hearing Friday. Mr. Hanes was instructed to put his complaint in writing. The written complaint is expected to be argued at another hearing Wednesday.

Mr. Hays said, his work in interviewing prospective witnesses has been easier since Judge Battle Friday repeated his caution that a court order restricting publicity is not to interfere with the right of witnesses to talk to attorneys for the prosecution or the defense.

Interviewed by telephone in Birmingham, Mr. Hanes said only he will have his motion asking security changes ready Wednesday. In court Friday Mr. Hanes charged the conditions "constitute cruel and unusual punishment."

Mr. Hays said he does not think the conditions criticized in Ray's cell result from intentional persecution.

"I don't for a moment think Sheriff Bill Morris is trying to drive this guy out of his mind. But it's the effect of this type of surveillance that counts."

[This article appears in Exhibit Seven to the Record. It is also set forth in volume three of the Record at page 323 and is paraphrased in volume two of the Record at page 43.]

**NEWSPAPER ARTICLE BY ROY HAMILTON WHICH APPEARED IN THE "MEMPHIS PRESS-SCIMITAR" ON SEPTEMBER 12, 1968.**

## HANES HAS 'NO PLANS' FOR DELAY

### RAY'S ATTORNEYS STILL PLANNING TRIAL NOV. 12

By Roy Hamilton

Press-Scimitar Staff Writer

The defense for James Earl Ray, accused killer of Dr. Martin Luther King, has "no plans" to seek a postponement of his trial scheduled Nov. 12 in Memphis, Arthur J. Hanes, Jr. said today.

"So far as I know we will be ready to go on the 12th," said Hanes, who is assisting his father, Arthur J. Hanes, in Ray's defense.

### REPORT

It had earlier been reported that the senior Hanes had "intimated" in a Birmingham interview that Ray might not be able to stand trial in November because his health was being jeopardized by intensive security measures in his Shelby County jail cell.

Hanes Sr. was in court on another matter but his son, when asked about the report, said, "Some things are read into statements that are quite often only in the eyes of the beholder. I know of no plans to ask for a continuance."

### COMPLAINT

The younger Hanes did confirm that Ray had complained about conditions in his cell and he said it was possible that a written motion may be filed next week asking for relief.

The defense lawyers are due back in Memphis Wednesday to inspect items of physical evidence accumulated by the state for use in the prosecution. The defense won access to the state's evidence in a hearing last week in Judge W. Preston Battle's court.

QUOTED

In the earlier report, Hanes Sr. was quoted as saying that Ray has undergone "enough to bug anybody" during his confinement. He said Ray has had two guards "breathing down his neck 24 hours a day" and sometimes has to cover his eyes against the bright lights "shining on him night and day" in order to sleep.

Hanes charged that the security setup surrounding Ray constitutes "cruel and inhuman treatment."

[This article appears in Exhibit Eight to the Record. It is also set forth in volume three of the Record at page 324 and is paraphrased in volume two of the Record at page 47.]

## STATEMENTS MADE BY ARTHUR HANES, SR. IN OPEN COURT UPON PRESENTATION OF AN ORAL MOTION.

(Made on September 6, 1968.)

Arthur Hanes, Sr.: "This man has two guards in there to sit with him 24 hours a day, Your Honor. He has television sets on him 24 hours a day. He has bright lights, brighter than these, burning in his eyes 24 hours a day. This man cannot rest. Why he hides under a pillow or cover to sleep, Your Honor, and I think this is cruel and inhuman. And Your Honor—"

The Court: "All right. All right, Mr. Hanes, you are getting into matters of the treatment of the defendant, and I think you should do this in writing. I think this is serious enough that whatever testimony we have be under oath and you ask for whatever relief you want and this can be a regular motion brought up before the Court."

[These statements appear in Exhibit Nine to the Record. They are also set forth in volume two of the Record at page 83.]